

REMARKS

Claims 2, 3, 5-32 and 34 presently appear in this case. No claims have yet been examined on the merits. All of the claims have been subject to a restriction requirement. Reconsideration and withdrawal of the restriction requirement and action on all of the claims now present in the case are hereby respectfully urged.

In accordance with 37 CFR 1.499, the examiner has required applicant to elect a single invention from among:

Group I, including claims 2 and 3, drawn to compounds of formula 2 and 3; and

Group II, including claims 5-32 and 34, drawn to methods of preparing the compound of formula 2 and 3 and intermediates involved in the preparation.

The examiner states that the inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1, because under Rule 13.2 they lack the same or corresponding special technical features. The examiner states that the feature linking the inventions together is the compound of Group I, but the compound fails the requirement of special technical feature because it has been disclosed in prior art by Kato et al. (2003). The examiner states that applicant is advised that a reply to this requirement, in order to be complete, must include an election

Appln. No. 10/578,259
Response dated April 14, 2008
Reply to Office action of March 14, 2008

of an invention to be examined, even though the requirement may be traversed, and an identification of claims encompassing the elected invention. The examiner further states that where the restriction is between product and process claims, where applicant elects claims directed to the product and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claims will be considered for rejoinder. This restriction requirement is respectfully traversed.

The examiner states that the only reason why Groups I and II are not considered to be based on the same special technical feature is because of a prior art reference published December 1, 2003. However, the present application claims the benefit of a Japanese priority application published November 4, 2003. If applicant is entitled to the benefit of that priority application, then Kato is not available as a reference and the grounds for restriction under 37 CFR 1.499 must fall. Attached hereto is a verified translation of the priority application. A certified copy of the priority application is of record in this case. It can be seen that all of the present claims are supported by this translated priority application. Accordingly, Kato is not available as a reference in view of the priority date that had been requested at the time that the application

Appln. No. 10/578,259
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was filed. As Kato is not available as a reference, all of the claims share a special technical feature and must be examined in this case. Reconsideration and withdrawal of this restriction requirement is therefore respectfully urged.

In order to be responsive, applicant hereby elects with traverse Group I, including claims 2 and 3. Although the present claims are not amended, a full set of claims are presented herewith in order to set forth which claims are elected and which claims are presently withdrawn.

Furthermore, regardless of whether or not the restriction is withdrawn, once the product claims are found to be allowable it is requested that the process claims requiring the limitations of the product claims be rejoined, examined and allowed in this case.

Accordingly, reconsideration and withdrawal of the restriction requirement and examination on the merits and allowance of all of the claims now present in the case are earnestly solicited.

Respectfully submitted,

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